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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2604-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

QUDDIS WIDENER,

Defendant-Appellant.

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Submitted January 22, 2024 – Decided June 25, 2024

Before Judges Berdote Byrne and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Indictment No. 16-09-2544.

Joseph E. Krakora, Public Defender, attorney for appellant (Frank M. Gennaro, Designated Counsel, on the brief).

Theodore N. Stephens, II, Acting Essex County Prosecutor, attorney for respondent (Matthew E. Hanley, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Quddis Widener appeals from the March 21, 2022 order denying his petition for post-conviction relief (PCR) following an evidentiary hearing. We affirm substantially for the reasons set forth in Judge John Zunic's comprehensive, written opinion.

## I.

Following a jury trial in February 2018, defendant was convicted and sentenced on a second-degree assault charge and found not guilty on two weapons charges. We incorporate the factual and procedural history from our opinion affirming defendant's conviction and sentence on direct appeal. State v. Widener, No. A-4140-17 (App. Div. Jan. 15, 2020) (slip op. at 1), certif. denied, 241 N.J. 378 (May 8, 2020).

On direct appeal, defendant argued the trial court erred by: failing to conduct a Wade<sup>1</sup> hearing; failing to instruct the jury on the lesser-included offenses of third-degree aggravated assault under N.J.S.A. 2C:12-1(b), fourth-degree assault under N.J.S.A. 2c:12-1(b)(3), and simple assault under N.J.S.A. 2C:12-1(a); improperly denying his motion for an acquittal after finding that the conviction was not against the weight of the evidence; and improperly relying on inconsistent facts when imposing his sentence.

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<sup>1</sup> United State v. Wade, 388 U.S. 218, 241-42 (1967).

We concluded defendant's Wade hearing argument was belied by the record because the victim identified defendant. In applying the same standard on a motion for an acquittal under Rule 3:18-2 as employed by the trial court, we rejected defendant's argument that the lack of evidence about the extent of the victim's actual injury should have resulted in his acquittal. We concluded the trial court properly denied defendant's motion based on sufficient evidence in the record that defendant committed aggravated assault. We further concluded the inconsistent verdicts were acceptable and in accord with State v. Muhammed, 182 N.J. 551, 578 (2005). Regarding defendant's sentence, we discerned no abuse of discretion by the trial court, and the sentence did not "shock our judicial conscience."

On January 18, 2021, defendant filed a self-represented PCR petition alleging ineffective assistance of trial counsel. On March 2, 2021, appointed PCR counsel filed a supplemental brief in support of defendant's petition. Defendant claimed trial counsel failed to (1) provide him with all relevant discovery before proceeding to trial, which hampered his defense or his ability to consider a plea agreement; and (2) timely investigate the possibility of surveillance camera footage in the area of the assault.

An evidentiary hearing was conducted in February 2022. Judge Zunic heard testimony from defendant and trial counsel. Relying on their testimony, the judge found trial counsel credible, and the relevant portions of his file submitted into evidence corroborated his testimony and supported his credibility. The judge determined trial counsel employed a "sound legal strategy" that was discussed with defendant prior to trial, based on an alibi defense defendant presented to him.

In contrast, the judge found defendant's testimony was "vague," "not specific," "inconsistent," and "thus not credible." The judge highlighted defendant's testimony that he would have elected to proceed to trial but, on cross-examination, stated that he was "unsure." Also, if he had received all of the discovery, he may have considered a plea and would have had to allocute to the charges, which was in contrast to his alibi defense. The judge found defendant's testimony was contradicted by the evidence submitted demonstrating he investigator interviewed the two alibi witnesses and trial counsel provided discovery.

On March 21, 2022, Judge Zunic issued a written opinion and an order denying defendant's PCR petition. The judge concluded defendant failed to establish a prima facie claim of ineffective assistance of counsel under

Strickland v. Washington, 466 U.S. 668, 687 (1984) and adopted by our Supreme Court in State v. Fritz, 105 N.J. 42, 52 (1987). In considering the two-prong Strickland test, the judge found trial counsel's "representation was not deficient and did not fall outside the umbrella of professional competence." As to the second prong, "nothing by [d]efendant demonstrate[d] the outcome would have been different even if [t]rial [c]ounsel were deemed deficient."

## II.

On appeal, defendant raises the following arguments:

### POINT ONE

DEFENDANT DEMONSTRATED THAT HIS TRIAL COUNSEL PROVIDED HIM WITH INEFFECTIVE ASSISTANCE BY FAILING TO PROPERLY INVESTIGATE HIS CASE AND ADEQUATELY COMMUNICATE WITH HIM BEFORE TRIAL.

A. THE PREVAILING LEGAL PRINCIPLES REGARDING CLAIMS FOR INEFFECTIVE ASSISTANCE OF COUNSEL, EVIDENTIARY HEARINGS AND PETITIONS FOR POST-CONVICTION RELIEF.

B. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO ADEQUATELY INVESTIGATE THE CASE BY MAKING A TIMELY SEARCH FOR VIDEO SURVEILLANCE EVIDENCE.

C. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO ADEQUATELY COMMUNICATE WITH DEFENDANT AS TO REVIEW OF

## DISCOVERY MATERIALS AND TRIAL STRATEGY.

As set forth in Judge Zunic's decision, these arguments lack merit. R. 2:11-3(e)(2). We add the following comments.

Appellate courts apply a deferential standard of review to an appeal of a denial of a PCR petition following an evidentiary hearing. State v. Pierre, 223 N.J. 560, 576 (2015); State v. Nash, 212 N.J. 518, 540 (2013). Our review is "necessarily deferential to [the] PCR court's factual findings based on its review of live witness testimony." Nash, 212 N.J. at 540. The legal conclusions of a PCR court are "reviewed de novo." Pierre, 223 N.J. at 576-77 (quoting Nash, 212 N.J. at 540-41).

It is well-settled that to establish a claim of ineffective assistance of counsel, a defendant must satisfy the two-prong test by a preponderance of the evidence: (1) "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment," and (2) "the deficient performance prejudiced the defense." Strickland, 466 U.S. at 687; Fritz, 105 N.J. at 58. A failure to satisfy either prong of the Strickland standard requires the denial of a PCR petition. Nash, 212 N.J. at 542; Fritz, 105 N.J. at 52.

The record shows that defendant's arguments were all considered, analyzed, and rejected by Judge Zunic. We are satisfied with the rulings made by the judge are sound because his factual and credibility findings were supported by substantial credible evidence, and his legal conclusions, guided by governing principles, were correct. We, therefore, affirm substantially for the reasons explained by Judge Zunic in his thorough and well-reasoned, written opinion.

In reaching this conclusion, we reject defendant's argument that he demonstrated ineffective assistance of counsel and is entitled to post-conviction relief. Based on the testimony from trial counsel and defendant, the court properly found trial counsel presented two alibi witnesses in support of defendant's defense, moved to set aside the verdict prior to sentencing, provided defendant with discovery and the grand jury transcript, and employed an investigator to locate potential surveillance footage around the area of the shooting and interview the two alibi witnesses. The record also shows the delay in retaining an investigator to locate potential surveillance footage was reasonable and based on the police report that stated no surveillance footage existed.

Simply put, there was no showing that defendant's trial counsel was ineffective. We discern no error in the judge's consideration of the issues following an evidentiary hearing. Therefore, we are satisfied that trial counsel's performance was not deficient and defendant provided nothing more than bald assertions.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION